Filed 7/29/20 In re Adriel C. CA4/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ADRIEL C. et al., Persons Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. ADRIANA S., Defendant and Appellant.	G058890 (Super. Ct. Nos. 17DP1309 & 17DP1310) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Jeremy D. Dolnick, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Jeannie Su, Deputies County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

* * *

INTRODUCTION

Adriana S., the mother of Adriel C. and Avianna C., appeals from an order terminating her parental rights under Welfare and Institutions Code section 366.26[1] on two grounds. First, the court failed to give proper notice under the Indian Child Welfare Act (ICWA) to "the Apache tribe." Second, the court should have ordered postadoption sibling visitation.

We affirm the order terminating Adriana's parental rights. After investigating, Orange County Social Services Agency (SSA) correctly determined it was not required to give notice to the Apache tribe. As to postadoption sibling visitation, Adriana lacked standing to assert any error in this regard after her parental rights were terminated.

FACTS

SSA filed a protective custody warrant in November 2017 for four children: Adriel (1) and Avianna (2 months), and N. Q. (7) and D. Q. (6). Adriana was the mother of all four children. Johnny C. was Adriel's and Avianna's father. Adriel and Avianna were placed at Orangewood. The other two children were released to their father and paternal grandparents.

Adriana was placed on psychiatric hold in Las Vegas in October 2017, shortly after Avianna's birth. She had both mental health and substance abuse problems. Upon her release, she moved to California, where she continued to use drugs and to

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

behave erratically. She had no stable housing, but lived with the children in a series of motels, from which she was regularly kicked out for destructive behavior.

At the detention hearing on December 1, 2017, Johnny informed the court he might have Indian ancestry. He said he had been to two reunions and his cousins and (paternal) grandmother professed Indian ancestry. He identified "Apache Indians" from Texas as his grandmother's tribe and "Hualapai, out of Arizona" as his mother's tribe. "That's all I know."

SSA's ICWA investigation revealed that two paternal cousins were enrolled members of the Lipan Apache Tribe of Texas, which is not a federally recognized tribe. The cousins also claimed to have Soboba ancestry, but they had not yet pursued enrollment. Johnny's mother also claimed Hualapai ancestry through her own mother and stated that her uncle (her mother's brother) was a tribal chief.

SSA sent ICWA notices to the Hualapai Tribe in Arizona and to the Soboba Band of Luiseno Indians in San Jacinto, California. It does not appear from the record that either tribe responded. No notice was sent to the Lipan Apache Tribe, as it is not a federally recognized tribe.

The court terminated Adriana's parental rights to both children on January 29, 2020. She had made only minimal progress on her case plan, and she had been visiting sporadically. Although she had received notice of the section 366.26 hearing, she did not attend.[2]

Adriana's counsel objected to the termination of her rights and asked for legal guardianship instead. He referred the court to the parental benefit exception of section 366.26, subdivision (c)(1)(B)(i), and the sibling bond exception of section 366.26, subdivision (c)(1)(B)(v), referring to the Q. children. Counsel argued, "I don't think that there's any guarantee that these children will have any contact if the court terminates

[2] Johnny did not object to the termination and agreed with the placement of the two children.

parental rights for [Adriel and Avianna]. [¶] So for those reasons, I ask the court to consider adopting the plan of legal guardianship[.]"

The court found that the two children were adoptable and that Adriana had not carried her burden to show that either the parental benefit exception or the sibling bond exception applied. The request for legal guardianship was denied.

DISCUSSION

I. ICWA Notice

Adriana asserts that the court erred by not sending ICWA notices regarding Adriel and Avianna to the Apache tribe. She fails to specify which Apache tribe should have received notice.

An "Indian child" is "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903, subd. (4).) An "Indian tribe" is "any Indian tribe . . . or community of Indians recognized as eligible for the services provided to Indians by the Secretary [of the Interior] because of their status as Indians . . . ." (*Id.*, subd. (8).)

The Federal Register lists agents for service of ICWA notices for eight federally recognized Apache tribes: Apache Tribe of Oklahoma (Kiowa); Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation (New Mexico); Mescalero Apache Tribe (New Mexico); San Carlos Apache Tribe (Arizona); Tonto Apache Tribe of Arizona; White Mountain Apache Tribe (Arizona); and Yavapai-Apache Nation (Arizona). (85 Fed.Reg. 20387 [Indian Child Welfare Act; Designated Tribal Agents for Service of Notice].)

Johnny told the court that his father's cousin had his "Indian card" for "Apache Indians. That's my grandma. She's from Texas." The court then asked Johnny to provide the names and addresses for relatives so that SSA could interview them. He did so.

SSA interviewed Johnny's father, who claimed Apache ancestry through his mother. He referred SSA to his cousins, enrolled Apache tribe members, as sources of more specific information. One of the cousins did have more specific information: he and his mother were registered members of the Lipan Apache Tribe of Texas.

Here was the corroboration of what Johnny had told the court. His family had connections to an Apache tribe in Texas. The Lipan Apache Tribe was not, however, on the Federal Register's list of tribes to receive ICWA notices; in fact, no Texas Apache tribe was on the list.

This is not one of those cases, so frequent in juvenile dependency, in which someone has a vague idea that there might be some connection with some tribe that a great-uncle may have mentioned long ago. In this case, Johnny's cousins were enrolled members of an Apache tribe in Texas that they had no trouble identifying. There was, therefore, no "reason to know" that some other tribe was involved (25 U.S.C. § 1912, subd. (a); §§ 224.2, subd. (d), 224.3, subd. (a)), and no need for SSA to notify all the other Apache tribes. (See *In re D.S.* (2020) 46 Cal.App.5th 1041, 1049-1050, 1052 [ICWA notice required if "reason to know"]; *In re Austin J.* (2020) 47 Cal.App.5th 870, 884 [duty of notice narrower than duty of inquiry].)

II. Sibling Visitation

Adriana asserts that the court erred by not requiring a plan pursuant to section 16002 for continued postadoption visits between Adriel and Avianna on the one

hand and the Q. children, their half-brothers, on the other,[3] as part of the order from the section 366.26 hearing. There are several problems with this argument.

First Adriana lacks standing to assert it. (See *In re Nachelle S.* (1996) 41 Cal.App.4th 1557, 1560-1561; see also *In re J.T.* (2011) 195 Cal.App.4th 707, 719-720.) Postadoption sibling visits are the concern of the children, not of the parent whose rights have been terminated. (*In re Nachelle S., supra,* 41 Cal.App.4th at p. 1562.) Second, she did not raise this issue with the court at the section 366.26 hearing, before her rights were terminated. She raised the sibling bond exception of section 366.26, subdivision (c)(1)(B)(v), in an effort to persuade the court to order legal guardianship in place of termination and adoption, but she never mentioned postadoption visits. She has therefore

[3] Section 16002, subdivision (e), provides: "If parental rights are terminated and the court orders a dependent child or ward to be placed for adoption, the county adoption agency or the State Department of Social Services shall take all of the following steps to facilitate ongoing sibling contact, except in those cases provided in subdivision (b) where the court determines by clear and convincing evidence that sibling interaction is contrary to the safety or well-being of the child: [¶] (1) Include in training provided to prospective adoptive parents information about the importance of sibling relationships to the adopted child and counseling on methods for maintaining sibling relationships. [¶] (2) Provide prospective adoptive parents with information about siblings of the child, except the address where the siblings of the children reside. However, this address may be disclosed by court order for good cause shown. [¶] (3) (A) To the extent practicable, the county placing agency shall convene a meeting with the child, the sibling or siblings of the child, the prospective adoptive parent or parents, and a facilitator for the purpose of deciding whether to voluntarily execute a postadoption sibling contact agreement pursuant to [s]ection 8616.5 of the Family Code on a date after termination of parental rights and prior to finalization of the adoption. The county placing agency may comply with the requirements of this paragraph by allowing a nonprofit organization authorized to provide permanency placement and postadoption mediation for adoptive and birth families to facilitate the meeting and develop the agreement. [¶] (B) The county placing agency is not required to convene a meeting to decide whether to voluntarily execute a postadoption sibling contact agreement pursuant to [s]ection 8616.5 of the Family Code in either of the following circumstances: [¶] (i) The county placing agency determines that such a meeting or postadoption sibling contact agreement would be contrary to the safety and well-being of the child. [¶] (ii) The child requests that a meeting shall not occur. [¶] (C) The child may petition the court for an order requiring the county placing agency to convene a meeting to decide whether to voluntarily execute a postadoption sibling contact agreement pursuant to [s]ection 8616.5 of the Family Code. If the court determines by a preponderance of the evidence that a postadoption sibling contact agreement or a meeting for the purpose of deciding whether to voluntarily execute such an agreement is contrary to the safety and well-being of the child, the reasons for the determination shall be noted in the court order, and the meeting is not required to occur. [¶] (D) Counsel to the child and counsel to the siblings who are dependents of the court shall be notified of, and may attend, both the meeting and the hearing described in this paragraph. [¶] (E) This paragraph shall not require attendance by a child, sibling, or other party at a meeting to decide whether to voluntarily execute a postadoption sibling contact agreement pursuant to [s]ection 8616.5 of the Family Code if the child, sibling, or other party cannot be located or does not wish to attend the meeting. This paragraph shall not prohibit a county placing agency from convening a meeting if not all of the parties are secured to attend."

waived the issue. (See *In re Anthony P.* (1995) 39 Cal.App.4th 635, 641-642 and cases cited therein.)

In her reply brief, Adriana argues that the failure of the children's counsel to raise this issue at the section 366.26 hearing was ineffective assistance of counsel, another issue she may not raise on the children's behalf. Again she points out that she raised the sibling bond exception to termination of parental rights at the hearing, but that is an issue entirely separate from the procedure outlined in section 16002.[4]

Section 16002, subdivision (e) – the statutory procedure that Adriana claims the court erroneously ignored – applies "if parental rights are terminated and the court orders a dependent child . . . to be placed for adoption[.]" At the point when this subdivision becomes mandatory, parental rights have been terminated, and the parent has no more legally cognizable interest in the proceeding than any stranger would have. Moreover, nothing in the statute requires the court to make any orders regarding section 16002, subdivision (e), at the hearing on termination of parental rights under section 366.26. This issue is entirely meritless.

[4] Adriana also asserts that the prospective adoptive parents refused to mediate pursuant to section 16002, subdivision (e)(3)(A). Nothing in the record supports this assertion. The relevant SSA report merely states that "the mediator informed the assigned social worker that the referral and mediation would not proceed"; it did not state that the adoptive parents refused to mediate. The citation to the reporter's transcript in the brief does not refer to a page on which mediation was mentioned. We are also baffled by the statement "This factor [to be considered in making a discretionary foster case placement] was never considered by SSA, the juvenile court, or Eric's attorneys throughout this case." Foster care was not an issue in this case, and we have no idea who Eric is.

DISPOSITION

The order terminating parental rights is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

GOETHALS, J.